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JOAN N. ROMERIL
MARION COUNTY RECORDER

AMENDMENTS TO COVENANTS & RESTRICTIONS FOR
HOMEOWNERS AT HAMPTONS AT GEIST

THESE AMENDMENTS are made this 01 day of August 1997 by the Hamptons at Geist Homeowners Association (hereinafter referred to as "Association").

WITNESSETH:

WHEREAS, more than two-thirds (2/3) of the lot owners in Hamptons at Geist desire to amend the Covenants and Restrictions recorded:

- (A) Made 10th of August 1987, by Herman Associates, Instrument #87-94074 - 21 pages, Section I and II;
- (B) Made 16th of August 1989, by Land Innovators Co., Instrument 89-113371 - 11 pages, on the plat to be known as "Hamptons at Geist" Section III;
- (C) Made 13th of December 1989 by Land Innovators Co., Instrument 90-7660 - 11 pages, Section IV.

in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, such lot owners have voted by ballot to revise such Covenants & Restrictions;

NOW THEREFORE, the Association hereby amends the Covenants & Restrictions for Homeowners at Hamptons at Geist as attached pages 1 thru 24.

This instrument prepared by Covenant Committee of Hamptons at Geist, D.E. Hamme, Chairman, 8211 Narragansett Court S, Indianapolis, IN 46256, Phone 849-2207.

COVENANTS AND RESTRICTIONS FOR HOMEOWNERS AT HAMPTONS AT GEIST

This instrument will supersede the following "Plat Covenants and Restrictions" filed with the Recorder of Marion County:

- (A) Made 10th of August 1987, by Herman Associates, Instrument #87-94074 - 21 pages, Section I and II;
- (B) Made 16th of August 1989, by Land Innovators Co., Instrument 89-113371 - 11 pages, on the plat to be known as "Hamptons at Geist Section III.
- (C) Made 13th of December 1989 by Land Innovators Co., Instrument 90-7660 - 11 pages, Section IV

The three previous covenants are now superseded by this covenant and restriction instrument.

1. DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

- A. "Association" means the Hamptons at Geist Association, Inc., an Indiana not-for-profit corporation, which is incorporated, its successors and assigns.
- B. "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, which are not Lots and which are not dedicated to the public, (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time.
- C. "Common Expenses" means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, maintenance, repair and replacement of the Common Areas and the performance of the responsibilities and duties of the Association including, without limitation, expenses for the improvement, maintenance and repair of the Lake Easements, Drainage Easements and Utility Easements and any Landscape Easements, shown and identified as such on any subdivision plat

of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, (iii) all sums lawfully assessed against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses.

- D. "Lot" means any numbered parcel of land shown and identified as a lot on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana.
- E. "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.
- F. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

2. **NAME**

The name by which the Real Estate shall be known is "The Hamptons at Geist."

3. **APPLICATION**

All owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of the Association provided for by this Declaration, and for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

4. **ASSOCIATION**

- A. **Membership.** Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.
- B. **Multiple or Entity Owners.** Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot.
- C. **Board of Directors.** The Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.
- D. **Responsibilities of the Association.** The responsibilities of the Association include, but shall not be limited to:
- (i) Installation and replacement of such fences, walls, foliage, landscaping, signs and other improvements in and upon the Common Areas as the Association deems necessary or appropriate, and maintenance of the Common Areas and any installation thereon in a clean and attractive condition and in good repair. The Association shall not be required to replace fences, landscaping or improvements in the Common Areas installed there by any Lot Owner.
 - (ii) Replacement of such foliage, landscaping, screening materials and other improvements in and upon any Landscape Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) as the Association deems necessary or appropriate and maintenance of any Landscape Easements and any installation thereon installed by the Association in a clean and attractive condition and in good repair.
 - (iii) Management and control of detention and retention ponds or lakes in and upon the Lake Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) for the

exclusive benefit of the Owners of the Lots and maintenance of the same in a clean, attractive and sanitary condition, and installation and replacement of such improvements in and upon said Lake Easements as the Association deems necessary or appropriate and maintenance of any such improvements installed by the Association in good condition and repair. Without limiting the generality of the foregoing, such maintenance obligations shall include overflow maintenance to protect the ponds or lakes from erosion, algae control and maintenance of minimum water levels. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law and prudent pond and lake operation.

- (iv) Any necessary replacement of the drainage system in and upon the Drainage Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon said Drainage Easements by the Association in good condition and repair, subject, however, to the obligation of the Owner of a Lot subject to a Drainage Easement to keep the portion of the Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded, or to reimburse the Association for its expense of repairing or maintaining that part of the drainage system which the Association repairs and/or maintains because such obligated Owner failed to do so.
- (v) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required under this Declaration and such other insurance as the Association deems necessary or advisable.
- (vi) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.
- (vii) Assessment and collection from the Owners of the Common Expenses.
- (viii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

- (ix) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas, the use and enjoyment of the lakes and ponds located in and upon the Lake Easements by the Owners, and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.
 - (x) Replacement and maintenance of any street identification signs within and upon the Real Estate designated as private street signs.
- E. Compensation. No Director of the Association shall receive compensation for his services as such director, except to the extent expressly authorized by a majority vote of the Owners.
- F. Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.
- G. Additional Indemnify of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnatee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnatee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which

it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such director or officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director or officer deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this paragraph 4F.

- H. **Bond.** The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

5. **INSURANCE**

- A. **Casualty Insurance.** The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which the Association is required to maintain hereunder. If the Association can obtain such coverage for a

reasonable amount, it shall also obtain "all risk coverage." The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire or such other hazards as the Association may deem desirable. Such insurance coverage shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any employee of the Association or of the Board of the Directors, and all owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

- B. Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and the Lake Easement and Landscape Easement areas (shown and identified as such upon any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) and shall insure the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.
- C. Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to Directors and Officers liability insurance.
- D. Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expense.

6. **MORTGAGE**

- A. **Notice to Association.** Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgage and the name of address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.
- B. **Notice to Mortgagees.** The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

7. **STREETS**

All streets are hereby dedicated to the public for its use. All Lots shall be accessed from the interior streets of the subdivision. No access to any Lots shall be permitted from Mud Creek Road.

8. **EASEMENTS FOR DRAINAGE, SEWER, AND UTILITIES**

Lots are subject to Drainage Easements, Utility Easements, and Sewer Easements, either separately or in combination of the three as shown on the plat, which are reserved for the use of the Lot Owners, public utility companies and governmental agencies as follows:

- A. **Drainage Easements (D.E.)** are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage system; and it shall be the individual responsibility of the Lot Owner to maintain the drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner by construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner.

- B. Sewer Easements (S.E.) are created for the use of the local government agency having the jurisdiction over the storm and sanitary waste disposal system of said city and/or county designated to serve the subdivision for the purposes of installation and maintenance of sewers that are a part of said system. Each Lot Owner must connect with any public sanitary sewer available.
- C. Utility Easement (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation of pipes, mains, ducts, and cables as well as for the uses specified in the case of Sewer Easements.
- D. All Lot Owners in the subdivision shall take title subject to the rights of public utilities, governmental agencies, and the right of the other Lot Owners in the subdivision to said easement herein granted for the ingress and egress in, along, and through strips of ground for the purposes herein stated.

9. **LANDSCAPE EASEMENTS**

Any areas of ground on the plat marked "Landscape Easements" are hereby created and reserved for the use of the Homeowner's Association for access to and the installation, maintenance, repair, and replacement of foliage, landscaping screening materials and other improvements. Except as installed and maintained by the Association, no permanent structures, including without limitation, fences, shall be erected or maintained in or upon any Landscape Easements. The Lot Owners in the subdivision shall take and hold title to the Lots subject to any Landscape Easements herein created and reserved.

10. **COMMON AREAS**

All Common Areas designated as a block, as shown on the plat, are hereby declared Common Areas. Portions of the Common Areas are designated as "Lake" which shall be the area which is reserved for water of the Lake. No structures of any kind shall be built within the area shown as the Lake. All Common Areas are hereby reserved for the use of the Association for any purposes deemed to be for the benefit of the Lot Owners as well as for the access to the Lake and for construction, management, and control thereof. The Common Areas including the Lake, are hereby reserved for the use and enjoyment of all the Lot Owners, and subject to the right of the Association to promulgate reasonable rules and regulations governing such use and enjoyment. The Lot Owners that are contiguous to the Lake shall not have exclusive use of the Common Areas between their lot lines and the edge of the water in the Lake. The Association shall be responsible for the mowing and maintaining of any Common Areas located directly between the lot line and the edge of the water of the Lake unless and until the Association shall elect to turn over such mowing and maintenance to each Lot Owner that is

contiguous to the Lake. There will be no swimming, ice skating, ice fishing, or boating in or on the Lake, unless the Association shall otherwise provide. The Association shall take and hold the titles to the Lots subject to the rights herein granted with respect to Common Areas. There shall be no Landscape Easements or other easements designated as such in the Common Areas. The Association shall have the authority and power to grant Drainage, Sewer, Utility and Landscape Easements in the Common Areas, and the same shall thereafter be binding on all the homeowners.

Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are not sufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all owners to cover the additional cost of repair or replacement. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas or any Landscape Easement, Lake Easement, Drainage Easement or Utility Easement areas, if due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or such Easement areas) or of maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

11. FENCES

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines. No trees shall be permitted to remain within said distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be of chain link type, and none shall be in the front yard. The Architectural Committee approval shall be required of all fence designs prior to erection.

12. NUISANCES

No outside toilets shall be permitted on any Lot in the subdivision.

13. CONSTRUCTION OF SEWAGE LINES

All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of the City of Indianapolis Department of Public Works.

14. IN GENERAL

No noxious or offensive activities shall be carried on on any Lot in the subdivision, nor shall anything be done on any of the said Lots that shall become or be an unreasonable annoyance or nuisance to any other Lot Owner in the subdivision.

15. ANIMALS

No animals shall be kept or maintained on any Lot in the subdivision, except the usual household pets, and in such cases, such household pets shall be kept reasonably confined so as not to be a nuisance.

16. VEHICLE PARKING

No trucks, campers, trailers, recreational vehicles, boats, boat trailers, or similar vehicles (excepting temporary construction trailers being used in conjunction with work in progress) shall be parked on any street or lot in the subdivision for a period of more than forty-eight hours unless such vehicles are stored within a garage. All automobiles parked for a period of more than forty-eight hours must be parked within a garage or in a driveway.

17. GARBAGE, TRASH, AND OTHER REFUSE

No Lot Owner in the subdivision shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Lot Owner accumulate or permit the accumulation out of doors of such refuse on his Lot. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other wastes shall be regularly removed from a Lot. All dwellings built in the subdivision shall be equipped with a garbage disposal.

18. FUEL STORAGE TANKS AND TRASH RECEPTACLES

Every tank for the storage of fuel that is installed outside any building in the subdivision shall be buried below the surface of the ground or entirely screened from view of surrounding properties and public street frontages. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be placed and kept as not to be visible from any street in the subdivision at any time, except at times when refuse

collections are being made. Fuel tanks for not over 25# fuel used for outdoor grills shall be exempt from this article.

19. **OUTBUILDINGS**

No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot in the subdivision. No trailer, shack, tent, boat, basement, garage, or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

20. **TEMPORARY STRUCTURES**

No temporary house, trailer, tent, garage, or other outbuilding shall be placed or erected on any Lot. No overnight camping shall be permitted on any Lot for over 48 hours.

21. **DITCHES AND SWALES**

It shall be the duty of every Lot Owner in the subdivision on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purpose of this sub section.

22. **RESIDENTIAL DEVELOPMENT REQUIREMENTS**

All Lots in the subdivision shall be known and designated as residential lots. No business buildings shall be erected on said Lots and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwellings District Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein other than the one (1) detached single family dwelling not to exceed thirty-five (35) feet in height, and residential accessory buildings. Any garage or accessory building erected shall be of a permanent type of construction and shall conform to the general architecture and appearance of the attached dwelling. The minimum square footage of living space of the dwellings constructed on all lots shall be 1800 square feet for ranch-type and 2200 square feet for the multi-story dwellings, provided that a minimum of 1000 square feet shall be on the ground floor, excepting if changing conditions in the marketplace, state of the art changes in development patterns or other unforeseeable conditions should occur during the time of build-out of the entire subdivision, the declarant, upon petition to the Metropolitan Development Commission and public hearing thereon for what is presently designated an "AP Approval" may reduce the living unit sizes excepting on perimeter ("P") lots for the good cause shown provided that in no instance shall interior lots be reduced below a minimum space of 1600 square feet for the ranch-type dwellings and 1900 square feet for the multi-story dwellings.

The square footage of the living space is exclusive of porches, terraces, garages, carports, accessory buildings and basements (excepting finished lower levels such as bi-levels or tri-levels).

23. RESIDENTIAL SETBACK REQUIREMENTS

- A. In general - unless otherwise provided in these restrictions or on the recorded plat, all development standards shall meet at least D-2 restrictions and no dwelling or above grade structure shall be constructed or placed on any Lot in the subdivision except as provided herein.
- B. Definitions - "Side Line" means the boundary that extends from the road on which the Lot abuts to the rear of said Lot. "Rear Line" means the Lot boundary line that is farthest from and substantially parallel to the road on which the dwelling on the Lot fronts except that on corner lots, it may be determined from either abutting road.
- C. Front Yards - The front building setback lines shall be thirty (30) feet on the collector streets, if any are constructed and twenty-five (25) feet on local streets all as set forth upon the plat of the subdivision.
- D. Side Yards - The side yard setback lines shall not be less than an aggregate of nineteen (19) feet. Provided, however, that no side yard shall be less than seven (7) feet from the side yard line of the Lot.
- E. Rear Yard - Rear setback lines shall be at least thirty-five (35) feet.

24. HEATING PLANTS AND GARAGES

Every dwelling in the subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year around human habitation of the dwelling. Every dwelling in the subdivision must have an attached, at least two-car garage.

25. ARCHITECTURAL CONTROL COMMITTEE

- A. Creation: There shall be, and hereby is, created and establish an Architectural Control Committee to perform the functions provided for herein. The Committee shall consist of three (3) persons appointed, from time to time, by the Board of Directors of the Association.
- B. Purposes and Powers of Committee: The Committee shall regulate the external design, appearance and location of dwellings, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the

value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

- (i) In General: All dwellings will be built by custom builders who have experience in custom construction of housing comparable to the standards of these commitments and development in the general area. No dwelling shall use aluminum or vinyl on its exterior surfaces for more than eight percent (8%) of the aggregate exterior surface area.

No dwelling, building, structure or improvement of any type or kind shall be repainted, constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include elevations (where required) and plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings submitted to the Committee shall be drawn to scale as the Committee may require. When required by the Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

- (ii) Power of Disapproval: The Committee may refuse to grant permission to repaint, construct, place or make the requested improvement when:
- (a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any subdivision plat of the Real Estate

recorded in the office of the Recorder of Marion County, Indiana; or

- (b) The design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
 - (c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.
- (iii) Rules and Regulations: The Committee may, from time to time, submit to the Board of Directors for its approval such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana as long as the same are not inconsistent with this Declaration or such subdivision plat(s).
- C. Duties of Committee The majority vote of the Committee shall determine approval or disapproval of proposed repainting, construction or improvements within thirty (30) days after all required information shall have been submitted to it. The submitted material will be dated and stamped as "Approved", "Approved as Noted" or "Rejected" (with reasons for rejection). One copy of all submitted material shall be retained by the Committee for its permanent files. If a proposal is rejected, the Owner may submit a formal written appeal to the Association Board of Directors.
- D. Liability of Committee: Neither the Committee, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.
- E. Inspection: The Committee may inspect the work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article.
- F. Enforcement: In the event of any violation of this Article, the Committee may use the following sequence of enforcement:
- (1) The Committee will issue, to the Owner, a written notification of the violation;

- (2) The Owner will have thirty (30) days to correct the violation;
- (3) If on the thirty first (31) day after the notification the violation has not been corrected, a fine may be assessed;
- (4) For each consecutive thirty day (30) day period thereafter, an additional fine may be assessed;
- (5) In the event the fines are not paid, the Association may place a lien upon the Owner's property until all assessments are paid in full.

26. LANDSCAPING

A minimum of two (2) trees of 2 1/2" or more will be required to be on, or planted on, each residential Lot, together with adequate shrubbery. Landscaping will be provided by cluster of deciduous and conifer trees, planted in groups of two, three, or four approximately 20 feet on center with groups of shrubbery in between.

27. DILIGENCE IN CONSTRUCTION

No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of destruction or damage. If the Lot Owner shall fail to remove or repair same within the time allotted, then the Association may repair or remove the same and the cost thereof shall be assessed against the Lot Owner and become a continuing lien upon the land in the same manner and enforceable by the same means and charges as the levying and collection of charges for maintenance of the Common Areas.

28. PROHIBITION OF USED STRUCTURES

All structures constructed or placed on any Lot in the subdivision shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

29. MAINTENANCE OF LOTS AND IMPROVEMENTS

All Lot Owners in the subdivision shall at all times maintain the Lot and any improvements situated thereon in a manner as to prevent the Lot or improvement from becoming unsightly, and specifically, such Lot Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris and rubbish;

- (C) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the subdivision;
- (D) Cut and remove dead trees;
- (E) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. In the event the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of the exterior maintenance shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

30. DRIVEWAYS

Each driveway in the subdivision shall be of concrete or asphalt materials and shall not exceed in width the side boundaries of the garage. No additional parking shall be permitted on a Lot other than the existing driveway.

31. ANTENNAE AND SATELLITE DISHES

No antenna in the subdivision shall exceed five (5) feet above a roof peak. Satellite dishes shall be permitted provided the diameter is twenty-four (24) inches or less and it is placed as not to be readily visible from the street.

32. ASSESSMENTS

Each Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (i) Regular Assessments for Common Expenses ("Regular Assessments") and (ii) Special Assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all liens

except only: (i) tax liens on any Lot in favor of any unit of government of special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment shall come due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for the delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed mortgagee or proposed purchaser having a contractual right to purchase the Lot, furnish to such a mortgagee or purchaser statement setting forth the amount of any unpaid regular or special assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement. Note, however, that the Association shall not be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

Purpose of Assessments. The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas and Landscape Easements, Lake Easements, Drainage Easements and Utility Easements shown and identified as such on any subdivision plat of the Real Estate now or thereafter recorded in the office of the Recorder of Marion County, Indiana, and of any public improvements in the Real Estate, (iii) for the performance of the responsibilities and duties of the Association and (iv) for such other purposes as are specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

Annual and Special Assessments. Common Expenses shall be assessed to the Lot Owners, either as an Annual Assessment, or as a Special Assessment, equally with respect to each Lot which is subject to assessment, all as set forth below:

- (A) An Annual Assessment shall be made for each Fiscal Year of the Association for all anticipated ongoing operating expenses of Association, including reserves. The amount of the aggregate Annual Assessments shall be equal to the total amount of expenses provided for in the Annual Budget, including reserve items.
- (B) Special Assessments may be made for any unusual and/or extraordinary items, including capital expenditures, and any unanticipated items. Special Assessments shall be payable in such amounts and at such times as may be provided in the resolution or other formal proposal setting forth the terms of such Special Assessments.

- (C) The Annual Assessment and all Special Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall be a continuing lien on the Lot upon which each such assessment is made as each installment thereof becomes payable. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment was payable.

Vote for Special Assessments. No Special Assessment shall be adopted unless voted for by sixty-six and two thirds percent (66 2/3%) of the members in good standing of the Association who are voting by special ballot or in person at a meeting called for this purpose. However, Special Assessments required because of an insufficiency of insurance shall not be subject to any vote by the Lot Owners.

Notice of Meetings for Assessments. Written notice of any meeting other than the Annual Meeting which is called for the purpose of approving the Annual Budget and Annual Assessments or a Special Assessment, shall be given or sent to all members and such notice shall state that the Annual Budget and/or a Special Assessment will be considered at such meeting.

Payment of Assessments. The Annual Assessments provided for herein shall be made for each Fiscal Year of the Association and shall be payable within thirty (30) days of the invoice date. If more than one Lot is conveyed or rented with a home then each Lot, or part Lot, shall be subject to the Annual Assessment. A part Lot shall be subject to a prorated share of such Assessment. The purchaser of each Lot shall be responsible to notify the Association his name and address for mailing purposes and satisfactory evidence of his ownership.

Delinquent Assessment. Any payment of an Assessment which is not paid within fourteen days of the date when due shall automatically be subject to a late charge of \$25.00. Late charges may continue to be assessed for each quarter a payment remains outstanding. The Board of Directors shall have the right to change the amount of the late charge, the time period before such charge is imposed; and to make other provisions for late charges and/or for imposing interest on late payments. The Association may bring an action at law against the Lot Owners personally obligated to pay the same; it may foreclose its lien against the Owner's Lot; or it may assert both rights and/or any other remedy available to it by law or in equity.

Lien of Assessments. All sums assessed by the Association, but unpaid, and any fines duly imposed by the Association, together with late charges, interest, attorneys' fees and the costs of collection thereof, shall constitute a lien on the Owner's Lot prior to all other liens, except only:

- (A) Tax liens on the Lot in favor of any assessing unit or special district; and

- (B) All sums unpaid on a first mortgage of record. The sale or transfer of any Lot by foreclosure or by deed in lieu of foreclosure shall not extinguish the assessment lien for payments which become due prior to the date of such sale or transfer, and shall not extinguish the personal liability of the Lot Owner for such assessments. No such sale or transfer shall relieve the Lot Owner from liability for any assessments thereafter becoming due or from the lien thereof. The lien for sums assessed may be foreclosed by a suit by the Association or the Managing Agent on its behalf in like manner as a mortgage of such property. In any such foreclosure the Lot Owner shall be required to pay a reasonable rental for the use and occupancy of the Lot. The Association, upon the affirmative vote of 90% of all the Lot Owners (so authorizing and setting up a special assessment to pay for the same), shall have the power to bid on the Lot at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Liability of Grantee. In a voluntary conveyance of a Lot other than deed in lieu of foreclosure, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the later for his share of the Common Expenses or for special assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon the request of any Lot Owner, purchaser or Mortgagee, the secretary or other authorized officer of the Association or the Managing Agent shall provide within seven (7) days of the request, a statement of the amount of current and delinquent assessments by the Association, including fines and charges, against a particular Lot. The Association may charge a reasonable charge for such statement if permitted by law and it may require the Lot Owner to confirm that the person requesting the statement is a Mortgagee or purchaser of or from the Lot Owner. Once having been furnished with such a statement, such person (other than the delinquent Lot Owner) shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth, plus costs of collection of such sums, if applicable.

Failure of Owner to Pay Assessments. Each Lot Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Lot Owner constitutes more than one person, the liability of such persons shall be joint and several. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same, or it may bring a joint action to recover money damages and to foreclose its lien on the Lot.

The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission: and provided further that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provision of the Subdivision Control

Ordinance 58-AO-3, as amended, or any conditions attached to approval of the plat by Plat Committee.

33. AMENDMENTS

These Covenants and Restrictions may be amended at any time by the Owners of at least two-thirds (2/3) of the Lots in the subdivision which is made subject to this Covenant. Each such amendment shall be evidenced by a written instrument, signed and acknowledged by the Lot Owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana.

These Covenants and Restrictions, as the same be amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until January 1, 2015, at which time said Covenants and Restrictions shall be automatically extended for the successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a voice vote a majority of the then Owners of the Lots in the subdivision, it is then agreed that said Covenants and Restrictions shall terminate in their entirety; provided, however, that no termination of said Covenants and Restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 6.A.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

34. **GENERAL PROVISIONS**

- A. **Right of Enforcement.** Violation or threatened violation of any of the Covenants, Conditions or Restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such Covenants, Conditions or Restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such Covenants and Restrictions; provided, however, that the Association shall not be liable for damages of any kind to any person for failing to enforce or carry out any such Covenants, Conditions or Restrictions.
- B. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any Covenants, Conditions or Restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such Covenants, Conditions or Restrictions.
- C. **Severability.** Invalidation of any of the Covenants, Restrictions or Provisions contained in this Declaration by judgment of court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.
- D. **Titles.** The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.
- E. **Applicable Law.** This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

35. **INVALIDATION**

Invalidation of any of the Covenants and Restrictions by judgment or court order shall in no way affect any of the other Covenants and Restrictions of this plat, which shall remain in full force and effect.

In witness whereof, the undersigned, Officers of the "Hamptons at Geist" Homeowners Association, have caused their names to be subscribed this 01 day of August, 1997.

Carrie Petty President
Deborah D. Gardner Vice President
Donna Rushton Secretary
Carol Schubardt Treasurer
[Signature] Board of Director
[Signature] Board of Director
Kathleen Loucheux Board of Director

FILED
AUG 21 1997
LAWRENCE TOWNSHIP
ASSESSOR

DEPT. OF METROPOLITAN DEVELOPMENT
DATE 8-28-97
PER [Signature]
ADMINISTRATOR

